Supreme Court, U. S.
FILED
OCT 21 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-201

CITY OF RICHMOND, VIRGINIA,

Appellant,

v.

UNITED STATES OF AMERICA and
WILLIAM B. SAXBE, ATTORNEY GENERAL, and
CURTIS HOLT, SR. *et al.* and
CRUSADE FOR VOTERS OF RICHMOND, *et. al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

APPELLANT'S REPLY MEMORANDUM

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APPELLANT'S REPLY MEMORANDUM

This Memorandum is filed in reply to the Motion to Affirm of Appellee Crusade for Voters of Richmond (Crusade) and the Motion to Dismiss or Affirm of Appellee Curtis Holt, Sr. (Holt).

I.

THE ATTORNEY GENERAL OF THE UNITED STATES NOT ONLY APPROVED THE PLAN SUBMITTED BY THE CITY OF RICHMOND, BUT IN FACT HELPED PREPARE THE PLAN, AND STATED IN THE COURT BELOW THAT THE PLAN SUBMITTED BY INTERVENOR CRUSADE FOR VOTERS WENT BEYOND THE REQUIREMENTS OF THE ACT.

In stating that the Attorney General "did not oppose" the declaration sought by Appellant, and "failed to object" to Appellant's nine-ward plan, both the Crusade and Holt have inaccurately described the actions of the Attorney General. The plan was not only approved by the Attorney General, but was prepared in part by his department.

The Attorney General, in his "Motion for Modification of the Master's Report" filed before the Court below, stated at page 14, regarding the City's ward plan, that "although the original enlargement of the at-large voting system was impermissible, the shift to the present ward plan was designed to, and did, cure that defect."

Earlier, at page 8, the Attorney General made the following comment:

> "Although it is true that Oslin testified he did not consider racial factors in drawing the plans, . . .[for the City of Richmond], it is not true that the City made no attempt to minimize the dilution of the black vote caused by annexation. Oslin was a

technical expert and was asked to use that technical knowledge to draw several plans. Several of those plans were then presented by officials of the City to the United States, and the City asked the help of the United States in fashioning a ward plan which would minimize the dilution of black voting strength.

"Suggestions were made by the Department of Justice. . . . Those suggestions were made by the Department of Justice, and accepted and adopted by the City, in an effort to minimize the dilution of the black voting strength in the manner directed by *Petersburg v. United States* in order to meet Constitutional and Voting Rights Act requirements. . . . After the plan was adopted by the City Council, it was incorporated in a proposed Consent Decree agreed to by the City and the United States."

Therefore, Appellee Crusade is just plain wrong when it states that the Attorney General "did not object to the amended relief sought by the City." (Crusade, Motion to Affirm, at 14). Appellee Holt is equally inaccurate in referring to the Attorney General's "belated acquiescence" and "failure to object". (Holt Motion to Dismiss or Affirm, at 10). In fact, the Attorney General affirmatively proposed the acceptance of the City's Ward Plan as meeting all the requirements under the Voting Rights Act.

With regard to the proposed ward plan of Appellee Crusade, the statement of Counsel for the Attorney General to the Court below in oral argument of March 20, 1974, beginning on page 21 of the transcript of the hearing, accurately describes the position of the United States.

JUDGE WRIGHT: Before you finish, would you address yourself to the Crusade Plan?

You have a reference in your brief, a footnote reference, which indicates the difference between what the Crusade proposes and what you have approved. Would you address yourself to that difference?

MR. BIXLER: Yes, your Honor.

If you have resolved all the other questions and you just come down to the question, and you are focusing on this swing ward of Ward H, under our plan, 41 percent of the people are black. Under their plan, it is something like 57 or 59 percent. And if you get down to the question of which is stronger Negro voting strength, of course 59 is larger than 41. I think it is true that that—we are going in a certain direction back towards restoring Negro voting strength when we drafted the nine-ward plan that was presented to the court.

It is clear that the Crusade Plan goes in that same direction and goes further.

There is a real question of whether the City is required or whether we can require the City

to go that far. When the court in *Petersburg* said to the maximum extent possible, I don't think they meant racial gerrymandering the other way.

That is, if it were possible to draw up a nine ward plan, I guess mathematically it would be possible to draw one up with eight black majority wards, perhaps nine. The districts might look sort of funny, but it might be possible to do that.

I don't think the *Petersburg* statement that you must go to the maximum extent possible means that you have to absolutely maximize Negro voting strength, and

JUDGE WRIGHT: Would it help purge also purpose —illicit purpose which there was in this case unquestionably, which you found initially?

MR. BIXLER: Yes, it would, your Honor, but just as the ward plan which the City adopted did cure purpose as it cured effect. I still don't think there is any different standard for curing a constitutional wrong, whether you have found effect or purpose or both of them.

The law of Section 5, is that you put them back, that you erase, that you wipe out that change

which had the effect of taking away constitutional rights.

There is a real question of whether we can ask the City to do more than that.

In this case, the City has chosen to go further than deannex, and so we welcome that and we think it is a proper remedy for this case.

II.

APPELLEE CRUSADE'S MOTION TO AFFIRM PRESENTS A COMPLETE CHANGE OF POSITION REGARDING POSSIBLE DE-ANNEXATION.

In the Court below, Appellee Crusade was properly concerned about the disastrous effects of de-annexation upon the entire population of Richmond. While these effects are ignored in its instant motion, they remain none the less real.

In its brief of February 4, 1974, objecting to the Master's Report, filed below, Appellee Crusade stated, at page 3:

> "The reality is that the Special Master's conclusion hurts black voters in Richmond for two fundamental reasons:
>
> 1) As a practical matter because of the comparative population and registration figures by race in the old city, and because of the realities of

> at-large elections, black voters in Richmond stand a better chance of exercising real influence with their votes under a fairly drawn ward election system—even with additional white voters—than under at-large elections;
>
> 2) To the extent that Richmond's black voters do exert influence in the governance of their city, it is no great gain to exercise influence in a worn-out shell, which does not have the room, nor financial resources to provide a good life for its citizens."

With reference to the Master's recommendation of de-annexation, the brief, at page 2, took issue with the Master's Report because "The result was a decision which sacrifices the real voting interests of live black voters in the City of Richmond in order to preserve the Voting Rights Act as an abstraction."

Further, at page 7 of the same brief, Appellee Crusade described the disastrous effects of a de-annexation decree upon the Richmond Public Schools.

These reasons remain viable. Nevertheless, Appellee Crusade now states, in its Motion to Affirm, at 6, that the result of the decision below is that the City must now de-annex the territory involved. Again, this position is that recommended by the Master, and does, indeed, ignore the facts. Any such result will not increase black voting strength, but will deny black voters a real voice in the City's government.

III.

APPELLANT'S RELIANCE UPON *PERKINS v. MATTHEWS* AS BRINGING ANNEXATIONS WITHIN THE VOTING RIGHTS ACT WAS REASONABLE AND PROPER.

Both Appellees, Crusade and Holt, refer to Appellant's "illegal" annexation and "illegal" election in 1970. These assertions are completely devoid of support in the record.

Immediately following this Court's decision in *Perkins v. Matthews*, 400 U.S. 379, Appellant began its continued efforts to gain approval of the voting changes caused by the annexation. Appellee Holt continues to state that *Allen v. Board of Education*, 393 U.S. 544, foresaw *Perkins* and made plain "beyond a doubt" that annexations were covered by the Act. (Holt, Motion to Dismiss or Affirm, at 5). *Allen* did no such thing. Indeed, two members of this Court did not so construe *Allen* when the *Perkins* decision was handed down.

The fact is, as the record herein establishes, when voting changes occasioned by annexations were held to be covered by the Voting Rights Act, Appellant began and most diligently pursued its quest for approval and its attempt to eliminate any dilution caused by the annexation.

IV.

THE ONLY EVIDENCE OF "BAD" PURPOSE CONSIDERED BELOW WAS THE IDENTICAL EVIDENCE INTRODUCED AND RELIED ON IN HOLT I, WHICH WAS REJECTED BY THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Appellee Crusade states that the Court below relied on additional evidence, other than that presented in *Holt I* and stipulated into the record below. No such evidence was recited by Appellee, because there was no other evidence regarding bad purpose presented below.

V.

VOTING AGE POPULATION IS THE DETERMINATIVE FACTOR.

Appellee Holt's contention that the black population below voting age will soon translate into a voting-age majority (Holt, Motion to Dismiss or Affirm, at 6), ignores reality.

As pointed out by the Attorney General in the hearing before the Court below (March 20, 1974, Tr. 18-21), the black voting age population, as a percentage of the whole, is historically below the total black population, as a percentage of the whole. It is not a one-shot, one-time matter, nor is it confined to Richmond. It is, however, a reality. And, as the

Attorney General pointed out, the voting age population sets the limit on voter participation. Voting age population is, therefore, an indispensible element.

VI.

ECONOMIC BENEFITS OF ANNEXATION ARE IRRELEVANT TO QUESTIONS ARISING OUT OF THE VOTING RIGHTS ACT, AND EVEN IF RELEVANT, THE MANIFEST BENEFITS OF ANNEXATION ARE ABLY DEMONSTRATED IN TWO PRIOR CASES AND BY AN INDEPENDENT STUDY.

Appellees Crusade and Holt protest the "lack" of evidence on the economic benefits of annexation. It is the position of Appellant and the United States that such evidence is irrelevant to the issue of whether constitutional rights have been violated, and, if so, the proper remedy.

Notwithstanding this fact, the record is replete with evidence of the benefits of annexation, in the record of *Holt I* and the annexation trial, which are a part of the record herein.

In addition, the independent study by the Urban Institute unequivocally determined that the annexation was very beneficial, financially and otherwise, and in fact that report states, at one point:

> A method is developed for testing whether a city will gain surplus revenue from the annexation of part of an adjacent jurisdiction. This method is applied to the case of Richmond, Virginia, which

in 1970 annexed 23 square miles of neighboring Chesterfield County. As a result of this annexation, the population of Richmond grew by 19 percent and there was a 23 percent increase in Richmond's real property tax base.

Based on fiscal 1971 budgetary data, estimates are made of the annual revenue accruing to Richmond from the annexed area and annual expenditures incurred in providing public services to annexed area residents.

Results of the analysis indicate that annexed area residents contribute $337 per capita in local revenue to Richmond, and incur $239 per capita in expenditures. Thus, Richmond realizes an annual surplus of $4.6 million from the annexation. It is suggested by the authors that this surplus will continue in the future; however, it is noted that the continuation of an annexation surplus is largely dependent upon the level of school enrollment from the annexed area, since education is the major local government expenditure.

In view of the substantial issues here involved, affecting not only the future of the City of Richmond but the future application of the Voting Rights Act to

any City similarly situated, the need for plenary review is evident.

Respectfully submitted,

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